UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tri-State Generation and Transmission Association, Inc.	)	Docket Nos. ER19-2440-000
	)	ER19-2441-001
	)	ER19-2442-000
	)	ER19-2444-001
	)	ER19-2470-000
	)	ER19-2474-000
	)	(not consolidated)
	)	
Thermo Cogeneration Partnership, L.P.	)	Docket No. ER19-2443-000
	)	
	)	

MOTION FOR LEAVE TO ANSWER AND ANSWER OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

Pursuant to Rules 212 and 213[1] of the Federal Energy Regulatory Commission's ("Commission" or "FERC") Rules of Practice and Procedure, Tri-State Generation and Transmission Association, Inc. ("Tri-State") hereby submits this Motion for Leave to Answer and Answer, which seeks to clarify pertinent issues of fact and law for the dual purposes of aiding the Commission in its decision-making process and quelling certain concerns raised by a handful of parties ("protesting parties") in comments and/or protests to one or more of the above-captioned proceedings.

These proceedings arise from Tri-State's transition to exclusive rate regulation by the Commission for the benefit of approximately 1.3 million ratepayers in New Mexico, Colorado, Wyoming, and Nebraska by eliminating Tri-State's exposure to inconsistent actions by state regulators that can and already have resulted in ratepayers in one state being required to subsidize ratepayers in another state. To address this serious problem, Tri-State's Board of Directors and

[1] 18 C.F.R. §§ 385.212 and 385.213 (2019).

Members voted overwhelmingly to end Tri-State's exempt status under the Federal Power Act ("FPA") by admitting one or more non-exempt Members, thereby causing Tri-State to become a FERC-jurisdictional "public utility" under Part II of the FPA. In this regard, Tri-State is following the path of virtually every other similarly-situated generation and transmission ("G&T") that operates in multiple states and has found itself at the risk of disparate state regulation.[2]

Accordingly, on July 23 and 26, 2019, Tri-State submitted to the Commission a set of initial rate filings to reflect its new status as a public utility under the FPA, including (1) a stated rate tariff ("Stated Rate Tariff") for the full requirements service that Tri-State currently provides its Members;[3] (2) each of its Wholesale Electric Service Contracts ("WESC") with the Members to which the Stated Rate Tariff applies;[4] (3) pre-existing transmission service and other transmission-related agreements (collectively "TSAs") between Tri-State and non-member transmission customers and various other counterparties;[5] (4) its Open Access Transmission Tariff ("OATT");[6] (5) revisions to Attachment N of its OATT, with proposed modifications to comply with Order Nos. 845 and 845-A;[7] and (6) applications for market-based rate authorization for Tri-State and its wholly-owned subsidiary[8] (collectively, the "Initial FERC Filings").

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2 *See, e.g., Wabash Valley Power Ass'n, Inc.*, 107 FERC ¶ 61,327, at 62,506 (2004); *Wolverine Power Supply Coop. Inc.*, 81 FERC ¶ 61,369 (1997); *Old Dominion Elec. Coop.*, Letter Order, Docket No. ER92-432-000 (May 18, 1992).

3 *Tri-State Generation and Transmission Association, Inc.*, FERC Electric Tariff Volume No. 1, Docket No. ER19-2440-000 (July 23, 2019) ("Stated Rate Tariff Filing").

4 *Tri-State Generation and Transmission Association, Inc.*, Initial Filing of Rate Schedules FERC No. 1 through No. 43, Docket No. ER19-2444-000 (July 23, 2019) ("WESCs Filing").

5 *Tri-State Generation and Transmission Association, Inc.*, Transmission Service Agreements, Docket No. ER19-2474-000 (July 26, 2019).

6 *Tri-State Generation and Transmission Association, Inc.*, FERC Electric Tariff Volume No. 2, Docket No. ER19-2441-000 (July 23, 2019) ("OATT Filing").

7 *Tri-State Generation and Transmission Association, Inc.*, Order No. 845 OATT Compliance Filing, Docket No. ER19-2470-000 (July 26, 2019) ("Order No. 845 Compliance Filing").

8 *See Tri-State Generation and Transmission Association, Inc.*, Application for Market-Based Rate Authority, Docket No. ER19-2442-000 (July 23, 2019); *see also Thermo Cogeneration Partnership, L.P.*, Application

Despite the efforts of certain protesting parties to complicate this proceeding, the Initial FERC Filings are straightforward and simply ensure that the rates, terms, and conditions of Tri-State's existing interstate operations and agreements are on file with the Commission consistent with the requirements of Part II of the FPA. They reflect the *status quo* of Tri-State's provision of services to Members and customers with such amendments as needed to transition to FERC regulation and comply with relevant Commission rules and regulations.

Of the more than 65 motions to intervene and comments filed in connection with the Initial FERC Filings, more than 52 actively support[9] or do not oppose[10] Tri-State becoming FERC jurisdictional and its Initial FERC Filings. Twelve parties submitted protests or comments expressing some concern about certain issues in one or more of the Initial FERC Filing dockets.[11]

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for Market-Based Rate Authority, Docket No. ER19-2443-000 (July 23, 2019) (collectively, "MBR Applications").

9 Thirty-four entities filed comments in support of approving Tri-State's request. *See* comments of Midwest Electric Cooperative Corporation; Wyrulec Company; Morgan County Rural Electric Association; Springer Electric Cooperative, Inc.; Carbon Power & Light Inc.; White River Electric Association, Inc.; Otero County Electric Cooperative, Inc.; K.C. Electric Association; Gunnison County Electric Association; Highline Electric Association; Roosevelt Public Power District; High Plains Power, Inc.; Southeast Colorado Power Association; Southwestern Electric Cooperative; Empire Electric Association; Nebraska Rural Electric Association; Socorro Electric Cooperative, Inc.; Sierra Electric Cooperative, Inc.; San Isabel Electric Association; Mountain View Electric Association, Inc.; the Colorado Farm Bureau; Garland Light & Power Co.; High West Energy; Wheatland Rural Electric Association; Y-W Electric Association, Inc.; Niobrara Electric Association, Inc.; Panhandle Rural Electric Membership; Bighorn Rural Electric Company; the National Association of Manufacturers; the Colorado Chamber of Commerce; the Colorado Competitive Council; the Colorado Mining Association; the National Mining Association, and the State of Wyoming Legislative Leadership Team.

10 Eighteen entities filed doc-less interventions that did not oppose Tri-State's request. *See* doc-less interventions of Wyoming Public Service Commission ("Wyoming PSC"); the New Mexico Public Regulation Commission ("NMPRC"). The National Rural Electric Cooperative Association ("NRECA"); Basin Electric Power Cooperative ("Basin"); Old Dominion Electric Cooperative ("ODEC"); Black Hills Colorado Electric, LLC ("Black Hills"); Xcel Energy Services, Inc. ("XES"); Western Area Power Administration ("WAPA"); Nebraska Public Power District ("NPPD"); Colorado Springs Utilities ("CSU"); Municipal Energy Agency of Nebraska ("MEAN"); GridLiance High Plains LLC ("GridLiance"); Natural Resources Defense Council, *et al*. ("NRDC"); Lincoln Electric System ("Lincoln"); Guzman Energy, LLC ("Guzman"); Delta-Montrose Electric Association ("DMEA"); the City of Gallup, New Mexico ("Gallup"); and Mountrail-Williams Electric Cooperative ("Mountrail-Williams").

11 These parties are: Colorado Public Utilities Commission ("CoPUC"); Sierra Club; Northwest Rural Public Power District ("Northwest Rural PPD"); Wheat Belt Public Power District ("Wheat Belt"); Gladstone New Energy, LLC ("GNE"); Kit Carson Electric Cooperative, Inc. ("Kit Carson"); Poudre Valley Rural Electric Association, Inc. ("PVREA"); LaPlata Electric Association, Inc. ("LPEA"); The Arkansas River Power

MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure permit the filing of an answer to a protest when the decisional authority so orders,[12] which it will generally do when the answer provides information helpful to the disposition of an issue, enables the issues to be narrowed or clarified, or aids the Commission in understanding and resolving issues.[13] As demonstrated below, Tri-State's instant Answer meets this standard because it corrects important misstatements of fact and law asserted by the protesting parties, and thereby provides the Commission with a more complete and accurate record upon which to base its decisions in these proceedings.

ANSWER

A number of the protesting parties, led primarily by CoPUC and the Sierra Club, raise issues that are outside the scope of the Initial FERC Filings, including matters pending in other dockets and cases, or that have already been resolved as a matter of fact and law.[14] These include

Authority ("ARPA"); United Power, Inc. ("United Power"); Public Service Company of New Mexico ("PNM"); New Mexico Public Regulation Commission ("New Mexico PRC"); and San Miguel Power Association, Inc. ("SMPA").

12 18 C.F.R. § 385.213(a)(2).

13 *See, e.g., Dominion Transmission, Inc.*, 129 FERC ¶ 61,048, at P 8 (2009) (permitting an answer to protests where the answer clarified the issues and assisted the Commission in its decision making process); *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,188, at P 7 (2004) (accepting the NYISO's answer to protests because it provided information that aided the Commission in better understanding the matters at issue in the proceeding); *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,212, at P 9 (2003) (permitting answers to answers that aided the Commission in understanding the issues); *Idaho Power Co.*, 95 FERC ¶ 61,482, at 62,717 (2001) (permitting an answer that clarified the issues).

14 Several of the protests questioned the Commission's authority to accept Tri-State's Initial FERC Filings because Tri-State did not "identify who the New Member will be, nor conclusively establish that such new member will meet the requirements that would provide a basis for FERC to exercise jurisdiction" over Tri-State as a public utility under the FPA. *See* Motion to Intervene and Protest of Gladstone New Energy, LLC Docket Nos. ER19-2440, *et al.*, at 13 (Aug. 13, 2019) ("GNE August 13 Protest"). *See also* Motion to Intervene and Protest of Gladstone New Energy, LLC, Docket Nos. ER19-2470 and ER19-2474, at 14 (Aug. 23, 2019) ("GNE August 23 Protest"); Notice of Intervention and Protest of the Colorado Public Utilities Commission, Docket No. ER-19-2440, *et al.* (Aug. 13, 2019) ("CoPUC August 13 Protest"); Protest of Sierra Club, Docket No. ER-19-2440, *et al.*, at 4-5 (Aug. 23, 2019) ("Sierra Club Protest") (citing CoPUC August 13 Protest). However, on September 3, 2019, Tri-State identified the new member triggering jurisdiction by the Commission. *See* Notice of Initial New Member and Request for Partial Waiver of Tri-State Generation and Transmission, Inc., Docket Nos. ER19-2440, *et al.* (Sept. 3, 2019).

issues of federal and state jurisdiction, generation resource planning, environmental matters, and Public Utility Regulatory Policies Act of 1978 ("PURPA") compliance.

CoPUC's primary objective in this case appears to be retention of exclusive regulatory authority over Tri-State, including with respect to Tri-State's wholesale sales, interstate operations, and other rate regulation matters that are now properly before the Commission. Sierra Club, which is neither a Member nor a customer of Tri-State, apparently seeks to use this proceeding to further its policy objectives.[15] To achieve their goals, CoPUC and Sierra Club challenge nearly every aspect of Tri-State's Initial FERC Filings, in most instances with broad generalizations, speculation, and little or no reasonable support.

CoPUC makes unwarranted allegations about Tri-State's Initial FERC Filings being "jurisdictionally problematic" and claiming that there is "nothing the Commission can do" other than dismiss Tri-State's filings.[16] Sierra Club largely repeats CoPUC's jurisdictional questions about the identity of Tri-State's new member.[17] But Tri-State has complied with the letter and spirit of the FPA and relevant Commission precedent in relinquishing its exemption under the FPA and establishing the Commission's jurisdiction as a matter of fact and law. Like other similarly situated jurisdictional wholesale G&Ts, Tri-State has retired its RUS debt and added a non-exempt member-owner.[18] With the admission of Mieco, Inc. ("Mieco"), Tri-State is no longer wholly-owned, directly or indirectly, by entities that are themselves exempt under section 201(f) of the

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15 *See* Sierra Club Protest at 2, Attachment A (*A Low-Cost Energy Future for Western Cooperatives*) and Attachment B (*Benchmarking Air Emissions of the 100 Largest Electric Power Producers in the United States*).

16 Ironically, CoPUC's actions and statements in its filings underscore the very problem Tri-State would like to avoid — the risk of broad and inconsistent regulation by several different state commissions with potentially competing interests and objectives, rather than fair and equitable regulation by a unitary regulatory body.

17 *See* Sierra Club Protest at 4-5.

18 *See, e.g.*, *Wabash Valley*, 107 FERC ¶ 61,327; *Wolverine Power*, 81 FERC ¶ 61,369.

FPA.[19] The admission of Mieco as a new member meets all of the factors cited by the Commission in its 2015 *Delta-Montrose* case:[20] (1) it has a patronage account representing its financial ownership interest in Tri-State, (2) it is entitled to an equitable share of Tri-State's assets upon dissolution, and (3) it has voting rights.[21] Tri-State's transition to FERC jurisdiction is similar to that of Wabash Valley Power Association, which became FERC-jurisdictional in 2004 when it paid off its RUS debt and had "two power marketers as members, thus not qualifying for the exemption [under section 201(f)]."[22]

What CoPUC finds "jurisdictionally problematic" is that Tri-State is now a FERC-jurisdictional public utility under the FPA, depriving CoPUC of jurisdiction to exercise its regulatory authority over Tri-State's wholesale energy sales and transmission of power in interstate commerce. Much of CoPUC's initial challenge to Tri-State's Initial FERC Filings was premised on not knowing the identity and possible rate impact of Tri-State's new member.[23] Now that Tri-State has identified and admitted the new member, CoPUC raises questions as to the manner and the specific terms under which the new member joined. In its latest filing on September 12, 2019, CoPUC asks the Commission to require Tri-State "to explain how its purported admission of a new member works to eliminate its exemption from Commission regulations under Section 201(f) of the [FPA] and why this transaction does not require Commission approval under the FPA."[24] CoPUC then raises new questions, speculating that the admission of Mieco "may" have violated

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19 16 U.S.C. § 824f.

20 *Delta-Montrose Elec. Ass'n*, 151 FERC ¶ 61,238, at P 8 (2015).

21 *Id.* at P 8.

22 *Id.* at P 29 n.32.

23 CoPUC August 13 Protest at 4, 6; Supplemental Protest of the Colorado Public Utilities Commission, Docket No. ER-19-2440-000 et al. (August 23, 2019) ("CoPUC Supplemental Protest").

24 Answer of Colorado Public Utilities Commission to Notice of New Member and Request for Waiver of Tri-State Generation and Transmission, Inc., Docket Nos. ER19-2440, *et al.*, at 1 (Sept. 12, 2019) ("CoPUC September 12 Answer").

sections 203 and 205(c) of the FPA and thus should be rejected.[25] In its September 12 Answer, CoPUC essentially demands that Tri-State prove a negative. However, Tri-State has no obligation to establish at FERC that a transaction or agreement *does not* require an approval by or filing at FERC as suggested by CoPUC. This is especially the case if no such approval or filing were required in the first instance.

As discussed below, to the extent the Commission finds that CoPUC has raised legitimate issues of material fact with respect to the Initial FERC Filings, such matters may be resolved through the Commission's hearing and settlement judge procedures. The remainder of CoPUC's speculative and unsupported contentions, however, should be rejected.

CoPUC, Sierra Club, and other protesting parties improperly seek to raise other issues that are outside the scope of this case. GNE raises issues in this proceeding about Tri-State's previous reciprocity Open Access Transmission Tariff ("Reciprocity Tariff") and Generation Interconnection Procedures, which have been superseded by the filing of Tri-State's jurisdictional OATT as part of the Initial FERC Filings. Because GNE has also filed a separate complaint regarding Tri-State's prior Generation Interconnection Procedures,[26] the Commission should disregard GNE's protest with respect to such matters in this proceeding. GNE's protest raises other matters outside of the scope of this proceeding that are pending in other forums.[27]

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25 *Id.* at 7-10.

26 *See* Complaint of Gladstone New Energy, LLC and Request for Fast Track Processing, Docket No. EL19-97-000 (Sept. 11, 2019).

27 S*ee* GNE August 13 Protest and GNE August 23 Protest. These include matters related to its efforts to establish a "legally enforceable obligation" under PURPA by tendering a power purchase agreement to Tri-State and the determination of Tri-State's avoided costs (pending before the NMPRC). *See In the Matter of the Formal Complaint of Gladstone New Energy, LLC against Tri-State Generation and Transmission Association, Inc.*, Case No. 19-00222-UT (Aug. 6, 2019). With respect to the "legally enforceable obligation" issue, FERC has already declined to pursue an enforcement action in a similar case. *Great Divide Wind Farm 2 LLC*, 166 FERC ¶ 61,090 (2019). Tri-State notes that GNE's complaint in the NMPRC proceeding referenced above relies on an interpretation of "legally enforceable obligation" that previously has been rejected by the NMPRC, however, that issue currently is pending before the Federal District Court in New Mexico. *See* Motion for Summary Judgment, *Great Divide Wind Farm 2 LLC v. New Mexico Pub.*

Three Tri-State Members, United Power, LPEA and SMPA, which are "all-requirements" customers under WESCs negotiated with Tri-State and filed as rate schedules in this case, raise issues related to PURPA, including whether certain terms of their WESCs comply with PURPA's mandatory purchase obligations with respect to qualifying facilities ("QFs"). CoPUC and Sierra Club join in raising similar issues. These issues are outside the scope of this case and have either been decided by the Commission already or are the subject of a pending rehearing request in a separate docket. The Commission has ruled that contractual provisions of the WESCs cannot limit Tri-State Member purchases of power from QFs, and the question as to whether Tri-State can recover fixed costs imposed on its other Members as a result of such QF purchases is pending rehearing before the Commission.[28] Tri-State also notes that a voluntary petition by 30 of Tri-State's other Members for a waiver of PURPA requirements (under which Tri-State would assume such obligations) is also pending before the Commission.[29] Accordingly, there is no need for the Commission to undertake these PURPA-related issues in this proceeding.

The balance of other issues raised by the protesting parties involve questions or challenges to Tri-State's Initial FERC Filings, particularly the OATT, which primarily concern detailed factual and other disputes that are best resolved through the Commission's hearing and settlement judge procedures. In some instances, these challenges reflect a misunderstanding of the Initial

Regulation Comm'n, No. 1:19-cv-00099-JB-CG (D.N.M. June 12, 2019). GNE's protest also raises questions concerning NMPRC's existing rate-making jurisdiction over Tri-State, which is a matter pending in Federal District Court in New Mexico. *See* Complaint for Declaratory and Injunctive Relief, *Tri-State Generation and Transmission Association, Inc. v. New Mexico Pub. Regulation Comm'n*, No. 1:13-cv-00085 KG-KRS (D.N.M. Jan. 25, 2013).

28 *See* Request for Rehearing of Tri-State Generation and Transmission, Inc., Docket No. EL16-39-001 (July 18, 2016); *Tri-State Generation and Transmission Ass'n, Inc.*, 155 FERC ¶ 61,269 (2016), *reh'g pending. Tri-State Generation and Transmission Ass'n, Inc.*, Letter Order, Docket No. EL16-39-001 (Aug. 11, 2016) (granting rehearing for further consideration).

29 Tri-State Generation and Transmission Association, Inc., *et al.*, Petition for Partial Waiver of QF Regulations Pursuant to Section 292.402, Docket No. EL16-101-000 (July 15, 2016).

FERC Filings or applicable Commission rules and practices in cases of this kind. Below, Tri-State responds to certain of these issues in order to inform the Commission's decision at this stage of the proceedings and to correct the record where necessary.

A. ANSWER TO PROTESTS IN DOCKET NOS. ER19-2440 & ER19-2444: TRI-STATE'S STATED RATE TARIFF AND WESC RATE SCHEDULES

The Stated Rate Tariff filed in Docket No. ER19-2440 reflects *no* changes to the wholesale power rates that Tri-State currently charges its Members.[30] The Stated Rate Tariff is exclusively applicable to Tri-State's Members, and establishes a comprehensive cost of service rate for the service the Members receive pursuant to the WESCs Tri-State filed in Docket No. ER19-2444.

The WESCs are pre-existing long-term all-requirements contracts, freely negotiated and entered into by Tri-State and its Members, which Tri-State requests the Commission to accept without modification or suspension.[31] The rate structure embodied by the Stated Rate Tariff and the WESCs was developed by Tri-State and its Members and unanimously approved by Tri-State's Board. As "customers" purchasing electric service from Tri-State, the Members are fully aware of both the interaction between the WESCs and the Stated Rate Tariff, and the Tri-State rate development and approval process used as the source of the charges for services provided under the WESCs. The cost of service data and other supporting materials attached to Tri-State's Initial FERC Filings provide a more than sufficient basis upon which the Commission should accept the Stated Rate Tariff and WESCs as filed by Tri-State as just and reasonable.

Nevertheless, certain protesting parties argue, erroneously, that (1) Tri-State has not provided adequate cost support, (2) Tri-State can change the Stated Rate Tariff without

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30 *See* Tri-State Stated Rate Tariff Filing at 3 ("Tri-State's current power rates to its Members, including its wholesale power firm service rate (Rate Schedule A-40), were unanimously approved by Tri-State's Board and have been in effect since 2017.").

31 *See* Tri-State WESCs Filing at 6, 11.

Commission authorization, (3) Tri-State should file its Articles of Incorporation, Bylaws, and certain Board Policies with the Commission, and (4) the Stated Rate Tariff and WESCs are inconsistent with PURPA.

1. Tri-State Has Provided Adequate Cost Support.

Tri-State's Stated Rate Tariff and its WESCs filings fully satisfy the Commission's cost support requirements. Certain protesting parties including GNE, PNM, Northwest Rural PPD, Wheat Belt, CoPUC and Sierra Club note that Tri-State's Stated Rate Tariff filing did not include estimates of future transactions and revenues.[32] However, Tri-State has satisfied its obligations under section 35.12(b)(1) of the Commission's regulations to provide "estimates, by months and for the year, of the quantities of services to be rendered and of the revenues to be derived therefrom during the 12 months immediately following the month in which those services will commence" by providing 2019 *pro forma* monthly billing data for each Member, which included a demonstration of the billing amounts for Schedule A-40 and the Other Rates in the Stated Rate Tariff.

The D.C. Circuit has explained that, "[i]n general, rate regulation determinations are based on projections from historical experience to a future effective period,"[33] and "[t]he Commission normally bases its decision on the estimates' reasonableness when made, disregarding events

[32] *See, e.g.*, Wheat Belt Public Power District's Protest and Request for Section 206 Investigation into Initial Rate Schedules A-40 and S, Docket Nos. ER19-2440, *et al.*, at 5 (Aug. 13, 2019) ("Wheat Belt Protest") (noting that, although "Tri-State provided the requisite information for calendar year 2019," Tri-State did not provide "the quantities of services to be rendered and of the revenues to be derived therefrom for the Class A Rate for the period from October 2019 to September 2020") (internal quotation marks omitted); CoPUC August 13 Protest at 13; Motion to Intervene and Comments of Public Service Company of New Mexico, Docket No. ER19-2440, at 3 (Aug. 13, 2019) ("PNM August 13 Comments"); Comments and Protest of the Northwest Rural Public Power District, Docket Nos. ER19-2440, *et al.*, at 3 (Aug. 13, 2019); GNE August 13 Protest at 15-17; Sierra Club Protest at 10-11.

[33] *Mun. Elec. Util. Ass'n of Alabama v. FPC*, 485 F.2d 967, 973 (D.C. Cir. 1973).

occurring between the filing and its own decision. . . ."[34] The 2019 *pro forma* billing data fully satisfies Tri-State's obligation to justify its proposed Stated Rate Tariff filing with cost of service estimates that were "reasonable when made."[35] Specifically, Tri-State supported the reasonableness of its estimates in stating:

> Pro forma billing data for calendar year 2019 provides the best information available at this time. . . . Development of Member revenues for the 12-month period commencing [on the Stated Rate Tariff's effective date] would require the availability of projected Member billing determinants that extend into 2020. Such projected Member billing data are not available at this time and will not be available until the 2020 Budget is approved.[36]

The D.C. Circuit has upheld the Commission's use of the "reasonable when made" standard, and has specified that, "the challengers of a utility's estimates, once the utility has shown them to be reasonable when made, must carry the burden of showing not only a substantial error but also that the resulting disparity would yield unreasonable results."[37]

CoPUC and Sierra Club also raise questions about cost impacts associated with the addition of the new member. However, as Tri-State has made clear, "[t]he addition of Mieco as a Member also will not adversely affect the rates of Tri-State or its Members."[38] Tri-State's Stated Rate Tariff filing is just and reasonable and fully justified based on known and measureable existing costs and estimates of future costs that were reasonable when filed.[39]

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34 *Sw. Pub. Serv. Co. v. FERC*, 952 F.2d 555, 556 (D.C. Cir. 1992).

35 *Id.*

36 Tri-State Stated Rate Tariff Filing at 8.

37 *Sw. Pub. Serv. Co. v. FERC*, 952 F.2d at 556 (internal quotation marks omitted); *see also Boroughs of Ellwood City v. FERC*, 731 F.2d 959, 966 (D.C. Cir. 1984).

38 Tri-State Generation and Transmission, Inc.'s Notice of New Member and Request for Partial Waiver, at n.2, Docket Nos. ER19-2440, *et al.* (Sept. 3, 2019).

39 *See Nat'l Energy & Trade, L.P. v. Tex. Gas Transmission, LLC*, 121 FERC ¶ 61,064, at P 60 (2007) ("Unsubstantiated allegations without more do not provide the basis, either in law or in fact, for ordering a hearing or a Commission-initiated investigation.").

2. Tri-State Cannot Change Its Members' Rates Without FERC's Authorization.

Certain protesting parties, including CoPUC and Kit Carson, also raise unfounded concerns that Tri-State can change its Stated Rate Tariff without Commission authorization. However, in accordance with section 205 of the FPA[40], any and all such changes require Commission approval before they can become effective.[41] Accordingly, the concern that "the plain language of the tariff appears to allow Tri-State to simply update the rates its members will be charged"[42] is misplaced.[43]

3. Tri-State Is Not Required to File Its Articles of Incorporation, Bylaws, and Additional Board Policies.

As part of the Stated Rate Tariff, Tri-State filed the relevant Board Policies ("BPs") related to its Stated Rates for cost support purposes.[44] Nevertheless, certain protesting parties, including SMPA, United Power and Sierra Club, also request Tri-State to file as separate rate schedules its Articles of Incorporation, Bylaws and certain other BPs, which the parties take the liberty of filing with their protests.[45] Tri-State opposes filing its Articles of Incorporation, Bylaws and BPs pursuant to section 205 of the FPA. These documents do not "significantly affect [jurisdictional] rates and services," and being required to file them as separate rate schedules would "deprive [Tri-

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40 16 U.S.C § 824d.

41 *City of Cleveland v. FERC*, 773 F.2d 1368, 1370 (D.C. Cir. 1985).

42 CoPUC August 13 Protest at 13.

43 *See Old Dominion Elec. Coop.*, 158 FERC ¶ 61,045, at PP 111-114 (2017) (recognizing that it is not necessary for a jurisdictional cooperative to be required to list all the circumstances under which it would be required to make a rate filing, as changes in rates, by their nature, require the Commission's approval pursuant to FPA section 205).

44 *See* Stated Rate Tariff Filing, Attachment D. This included BP-115 (*Distributed Resource Policy and Rates*), BP-117 (*Renewable Energy Credit Policy and Rates*), BP-118 (*Joint Participation to Promote Distributed Resources*), BP-315 (*Process for Adoption, Review and modification of Rate Design*), BP-503 (*Financial Goals and Capital Credits Policy*), and BP-507 (*Financial Forecast and Budget Policy*). While the Board Policies are not generally a matter of public record, Tri-State's Member cooperatives all have access to all of Tri-State's Board Policies.

45 *See* SMPA Protest (filing BP-101 (*QF Capacity and Energy Purchase Policy*), BP-316 (*Non-Rate Dispute Resolution Policy*), and BP-406 (*Request for Tri-State Information*); United Power Protest at 5; Sierra Club Protest at 8.

State] of the flexibility to manage [its] operations by introducing delay and layered decision-making … from filing obligations for [documents] that have an insignificant impact on rates."[46] Moreover, filing and posting of these additional documents would serve no practical purpose because any jurisdictional agreements executed by Tri-State in connection with such document would need to be filed with the Commission according to the FPA and FERC's rules, regulations and precedent. SMPA cites no persuasive authority for requiring a G&T cooperative such as Tri-State to file its Bylaws,[47] and requiring Tri-State to do so under FPA section 205 would be an unwarranted intrusion into the internal business affairs of Tri-State.[48] Although it objects to such a filing requirement, Tri-State notes that its Articles of Incorporation and Bylaws are already a matter of public record.[49]

While Tri-State's Initial FERC Filings included certain of its BPs as supporting documents for informational purposes, Tri-State is not required to file its BPs for Commission approval pursuant to FPA section 205.[50] Imposing a section 205 filing obligation on Tri-State with respect to its BPs would impermissibly intrude on Tri-State's freedom to alter those policies as necessary

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46 *See PacifiCorp*, 127 FERC ¶ 61,144, at P 11 (2009) (citing *Town of Easton v. Delmarva Power and Light Co.*, 24 FERC ¶ 61,251, at 61,531 (1983)); *Allete, Inc.*, 161 FERC ¶ 61,013, at P 13 (2017) (finding "the rule of reason allows the Commission to exercise its discretion to allow utilities to forego filing particular contracts that deal only with matters of 'practical insignificance"); *City of Cleveland v. FERC*, 773 F.2d at 1376 (finding "[t]here is an infinitude of practices affecting rates and service. The statutory directive must reasonably be read to require the recitation of only those practices the affect rates and service significantly, that are essentially susceptible of speculation, and that are not so generally understood in any contractual arrangement as to render recitation superfluous").

47 The cases cited by SMPA involve a regional reliability council, independent system operators/regional transmission organizations ("ISOs/RTOs"), and investor-owned utilities and are not applicable. *See* SMPA Protest at n. 10 (citing *W. Sys. Coordinating Council*, 96 FERC ¶ 61,348, at 62,294 (2001)); *id.* at n.23 (citing *Am. Wind Energy Ass'n v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033, at P 49 (2019)) & n.28 (citing *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282, at P 80 (2016), *id.* at n.29 (citing *Portland General*, 144 FERC ¶ 61,087, at P 25 (2013)).

48 *See Cal. Indep. Sys. Operator Corp. v. FERC*, 372 F.3d 395 (D.C. Cir. 2004).

49 Tri-State's Articles of Incorporation and Bylaws are filed with the SEC.

50 *See Fla. Power & Light Co. v. FERC*, 660 F.2d 668 (5th Cir. 1981).

to respond to changing market conditions and/or the needs of its Members.[51] Of course, as noted above, if Tri-State were to change its BPs in a manner that impacted the Stated Rates, it would be required to make a filing under FPA section 205 to implement any such rate change.

4. The WESCs Are Not Inconsistent with PURPA.

As noted above, three Tri-State Members, United Power, LPEA and SMPA, which are "all-requirements" customers under WESCs negotiated with Tri-State and filed as rate schedules in this case, raise issues related to PURPA, including whether certain terms of their WESCs comply with PURPA's mandatory purchase obligations with respect to QFs.[52] CoPUC and Sierra Club join in raising similar PURPA compliance issues, with CoPUC arguing "as noted in the Sierra Club's protest, major revisions of Tri-State's wholesale electric contracts may be necessary in order to ensure that they comply with PURPA."[53]

In its protest, United Power states that it "in no way seeks to abrogate the WESC" with Tri-State and it "acknowledges the value of maintaining the key terms and conditions of the long-term contract to preserve the bargain of the parties."[54] Tri-State agrees with United Power about the importance of preserving the sanctity of its WESCs. "All-requirements" contracts like the WESCs, under which cooperative members agree to purchase all or almost all of their power

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51 *Id.* at 676 (holding the Commission erred in requiring FP&L to file a statement of its policy relating to availability of electric transmission service where, as a result of imposing the filing requirement, FP&L, "lost the freedom to alter its policy of availability" and because "the Commission could in the future alter FP&L's policy to one undesired by FP&L's management," which effectively made FP&L an involuntary common carrier given that, "[a]lthough FP&L had a policy regarding the availability of wheeling, FP&L, nevertheless, negotiated interchange transmission service agreements on an individual basis with each municipal utility when approached").

52 *See* United Power Protest at 7; SMPA Protest at 18; LPEA August 23 Protest at 3.

53 CoPUC September 12 Answer at 11; *see also* Sierra Club Protest at 16-20.

54 United Power Protest at 7. *See also No. Virginia Elec. Coop., Inc. v. Old Dominion Elec. Coop.*, 114 FERC ¶ 61,240, *reh'g denied*, 116 FERC ¶ 61, 173 (2006) (rejecting request to modify all requirements contracts where there was no showing that the contract in question had become unjust or unreasonable or unduly discriminatory such that modification was required).

requirements from a G&T, have been and still are the backbone of the wholesale electric cooperative model.[55] This is the case with most G&Ts, including G&Ts subject to regulation by the Commission under the FPA, and all Tri-State Members entered into long-term contracts based on this principle.

Tri-State also respects the need to comply with Commission precedent regarding PURPA requirements. United Power and the other protesting parties mentioned above raise specific concerns in this proceeding about whether a WESC provision allowing a Member to purchase up to five percent (5%) of their power requirements from third parties is inconsistent with PURPA. They cite *Delta-Montrose,*[56] in which the Commission granted a petition for declaratory order by a Tri-State Member that the five percent (5%) provision in its WESC could not limit its right to purchase power from QFs under PURPA. Under the Commission's ruling in *Delta-Montrose*, and FERC Order No. 69,[57] existing contracts cannot frustrate PURPA obligations. The WESCs cannot restrict a Tri-State Member from purchasing power from QFs in excess of the five percent (5%) allowance. The terms and conditions of the WESC and its five percent (5%) distributed/self-generation allowance cannot and do not contradict or violate PURPA because a distributed generation seller of output has the ability to sell all of its power to the Tri-State Member. Tri-State

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55 *See Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 874 F.2d 1346, 1357, 1359 (10th Cir. 1989) ("[T]he all-requirements contract and the entire enterprise of the parties . . . are based on the continuance of the contract throughout the agreed-upon term, especially in light of the cooperative nature of the Tri-State system, the role the all-requirements contract plays in the cooperative venture, and the participation and interrelationship of the individual cooperatives. . . . Only through these expectations and the fulfillment of the parties' respective obligations could the cooperative system work. Indeed, the assurance of a long-term source of power and a long-term revenue stream is the very essence of the all-requirements contract and the Tri-State system; and the cooperative nature of the Tri-State system is dependent on the continuance of each member's contract.").

56 *Delta-Montrose Elec. Ass'n*, 151 FERC ¶ 61,238 (2015).

57 *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs., Regs. Preambles ¶ 30,128, at 30,874 (1980).

acknowledges that existing contracts cannot frustrate PURPA requirements under current law. The Tri-State WESCs do not need major revisions, or indeed any revisions, to accommodate PURPA requirements. The Commission has spoken on this issue and, accordingly, it need not be addressed again in this proceeding.

Where Tri-State differs with the protesting parties concerns the applicable "avoided costs" for such power sales, which is a separate issue from the five percent (5%) allowance under the WESC. Tri-State believes that, under PURPA and Order No. 69, for all-requirements Members such as United Power, LPEA and SMPA, the "avoided costs" of the Member are equal to Tri-State's avoided costs, not the price the Member otherwise agreed to pay for power transmitted by Tri-State, along with all the other Tri-State Members. Tri-State objects to certain Members being in a position to exploit differences between the two and require other Tri-State Members to bear a greater share of stranded or fixed costs. However, Tri-State notes that this issue is pending rehearing before the Commission in another docket[58] and, accordingly, should not be addressed in this proceeding. Also, as noted above, thirty of Tri-State's Members have filed a petition for a waiver of PURPA requirements (which, if granted, would resolve the avoided cost issues). That matter is also currently pending before the Commission.[59] In sum, the PURPA issues raised by the protesting parties are outside the scope of this case and have either been decided by the Commission already or are the subject of a pending proceeding in a separate docket.

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58 *See* Request for Rehearing of Tri-State Generation and Transmission, Inc., Docket No. EL16-39-001 (July 18, 2016); *Tri-State Generation and Transmission Ass'n, Inc.*, 155 FERC ¶ 61,269 (2016), *reh'g pending. Tri-State Generation and Transmission Ass'n, Inc.*, Letter Order, Docket No. EL16-39-001 (Aug. 11, 2016) (granting rehearing for further consideration).

59 Tri-State Generation and Transmission Association, Inc., *et al.*, Petition for Partial Waiver of QF Regulations Pursuant to Section 292.402, Docket No. EL16-101-000 (July 15, 2016).

B. ANSWER TO PROTESTS IN DOCKET NO. ER19-2474: TRANSMISSION SERVICE AGREEMENTS

1. Tri-State's Transmission Service Agreements Are Just and Reasonable.

The TSAs between Tri-State and its transmission service customers were negotiated on an arm's-length basis. CoPUC makes general assertions that these agreements "may not be just and reasonable," and GNE asserts that the TSAs are "contracts for transmission service from a monopoly service provider" that "may contain provisions that are not just and reasonable." Both suggest that the agreements were not the result of arm's-length negotiation, but neither offers any factual or legal support for these claims. These protests reveal a lack of understanding as to the nature of Tri-State's TSAs. They focus entirely on agreements between Tri-State and its Members; however, other than the Non-Firm Point-to-Point Agreement with DMEA, the TSAs are *exclusively between Tri-State and non-Members*. As Tri-State explained in its transmittal letter, these pre-existing agreements, many of which have been in place for years, are the result of arm's-length bargaining among sophisticated parties. Importantly, no party to the TSAs has protested the specific terms of the TSAs in this docket.[60]

C. ANSWER TO PROTESTS IN DOCKET NOS. ER19-2442 & ER19-2443: MBR APPLICATIONS

CoPUC, Sierra Club and GNE allege that with respect to the MBR Applications, the Commission must take into consideration the FERC-jurisdictional assets of the new member. They assert that because the new member was not identified at the time of the Initial FERC Filings, it would be premature to issue an order on the MBR Applications.[61] To the contrary, the new

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[60] Kit Carson made a general comment urging the Commission to set the TSAs for hearing to ensure that they are just and reasonable, but does not protest specific terms. Amended Motion to Intervene and Protest of Kit Carson Electric Cooperative, Inc., Docket Nos. ER19-2440, *et al.*, at 8 (Aug. 23, 2019) ("Kit Carson Protest").

[61] CoPUC August 13 Protest at 9; Sierra Club Protest at 6; GNE August 13 Protest at 3-4.

member(s), like all of the Tri-State Members existing as of the date of the MBR Applications, are not "affiliates" for purposes of the MBR Applications and the related market power and other analyses because no Member or new member owns or will own 10% or more of the voting securities of Tri-State.[62] Therefore, none of the assets or affiliates of the Members (whether existing as of the date of the MBR Applications or a new member, such as Mieco) are relevant for purposes of the Commission's evaluation of the MBR Applications and the market power and other analyses discussed therein.

Sierra Club, in its protest, suggests that Tri-State (i) improperly de-rated the output of certain wind/solar facilities from which Tri-State purchases power under long-term contracts in the relevant balancing authority areas ("BAA"), and (ii) improperly included Southwest Power Pool's ("SPP") uncommitted capacity in allocating Tri-State a share of the simultaneous import limits ("SIL") into the Western Area Colorado Missouri ("WACM") BAA indicative screens analyses.[63]

Tri-State notes that the wind and solar facilities from which Tri-State purchases power are intermittent resources, and they are compensated on the basis of kWh of energy delivered. FERC precedent allows energy-only contracts to be reflected in MW-equivalents by the power purchaser for purposes of the indicative screens,[64] which supports Tri-State's reduction of certain of its power purchase arrangements based on the average MW purchased by Tri-State for its Members' load.

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62 *See* 18 C.F.R. § 35.36(a)(9); Tri-State Market-Based Rate Application, Docket No. ER19-2442, at 4 (July 23,2019); Thermo Cogen Market-Based Rate Application, Docket No. ER19-2443, at 5 (July 23, 2019).

63 *See* Sierra Club Protest at 34-36 (confidentially filed pages).

64 *See e.g.*, *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61,065, at PP 140-144 (2015).

In addition, Tri-State properly utilized the Commission's approved methodology for allocating imports into the WACM BAA for its WACM BAA indicative screens analyses. Contrary to Sierra Club's allegation, the MBR Applications' indicative screens analyses for the WACM BAA properly included SPP as a first-tier market for purposes of allocating a portion of the SIL to Tri-State because SPP along with Public Service Company of Colorado, Tucson Electric Power Company, and Public Service Company of New Mexico ("PNM") are each markets first-tier to the WACM BAA.[65] Thus, the uncommitted capacity of these four first-tier markets to the WACM BAA is properly considered in allocating a share of the SIL into the WACM BAA. Sierra Club's statement that the list of WACM first-tier BAAs used by Tri-State in its screens differs from the list of WACM first-tier markets used by PNM in its recent market-based rate filing is irrelevant for purposes of Tri-State's and Thermo Cogen's indicative screens analyses.

Accordingly, Sierra Club's allegations are incorrect and misleading. The MBR Applications provide all of the necessary data for the Commission to act, and Tri-State requests the Commission to approve the MBR Applications as filed.

D. ANSWER TO PROTESTS IN DOCKET NO. ER19-2441: OATT

The OATT filed by Tri-State in its Initial FERC Filings conforms in every respect with the *pro forma* OATT, except in limited instances where non-conforming terms are consistent with or superior to the *pro forma* OATT, are contemplated by it (areas where the *pro forma* OATT instructs the filing utility to provide specific details), or otherwise are reasonably required and explained under the circumstances, such as Tri-State's transition from a non-jurisdictional to a jurisdictional public utility.

[65] *See* WACM's FERC Form No. 714.

ARPA, CoPUC, Kit Carson, GNE and PNM object to a number of specific elements in Tri-State's proposed OATT Filing. CoPUC and GNE base their challenges, in part, on whether the Commission has jurisdiction over Tri-State (an issue now clarified with the addition of Mieco as a new member). The other protestors either argue that the Commission should adopt what they claim are superior alternatives to the tariff provisions put forth by Tri-State or that the Commission should set the proposed OATT for hearing and settlement procedures to sort out the contested issues.

As shown below, Tri-State's proposed OATT is just and reasonable as filed. The protesting parties have not demonstrated otherwise, nor have they identified genuine issues of material fact that would need to be resolved at a settlement and/or hearing proceeding. Nonetheless, in the event the Commission determines that hearing or settlement procedures are needed to resolve parts of the OATT Filing, Tri-State requests the Commission to narrow the issues set for hearing by identifying those parts of the OATT Filing that are just and reasonable based on the current record and, accordingly, are excluded from any hearing and settlement proceeding.

1. The Data Inputs for Tri-State's Formula Rate Are Sufficiently Supported on the Basis of the Current Record.

ARPA challenges Tri-State's use of 2018 RUS Form 12 data to populate the Formula Rate template, arguing that Tri-State has not provided access to the supporting data and that since Tri-State is no longer subject to RUS requirements, its use of RUS data may not represent a reasonable approach.[66] ARPA also argues that Tri-State has not adequately identified the "company records"

[66] Motion to Intervene, Protest, Request for Refund Protection, and Hearing of Arkansas River Power Authority, Docket Nos. ER19-2441, *et al.*, at 11-12 (Aug. 13, 2019) ("ARPA Protest").

that are the source for multiple inputs to the formula rate,[67] and that in other instances Tri-State has not identified the source data used as inputs to the formula OATT rate.[68]

Tri-State chose to use 2018 RUS Form 12 data for a number of inputs because, at the time of the initial rate filing in this docket, Tri-State was not a jurisdictional entity and was not required to produce, or file an annual FERC Form 1. For the interim period until it starts assimilating data in a FERC Form 1 format, Tri-State elected to present the audited financial and operational data included in its 2018 RUS Form 12 as the basis for several of the inputs to its proposed transmission formula rate.[69] Now that Tri-State is FERC-jurisdictional it will, as required, prepare an annual FERC Form 1 that will be used in its formula rate going forward. Tri-State also intends to make a subsequent FPA section 205 filing to change the references in its formula rate template to reflect the use of FERC Form 1 data and explain how the template will use the FERC Form 1 data prior to its next Annual Update filing.[70]

To support its initial OATT Filing, Tri-State posted on its OASIS a summary document about the 2018 RUS Form 12 data used to populate Tri-State's proposed formula rate template.[71] However, in response to ARPA's stated concerns about the need for more data, Tri-State has also posted its populated formula rate template on its OASIS site.[72]

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67 ARPA Protest at 12-13.

68 *Id.* at 13.

69 Tri-State notes that it prepares an informational RUS Form 12 for use in developing the rates for Tri-State's FERC-approved formula rate in SPP. Therefore, even though Tri-State is no longer RUS regulated, the Commission has approved Tri-State's continued use of RUS Form 12 in the place of FERC Form 1. Therefore, Tri-State's use of its RUS Form 12 data here, in the interim, is reasonable and an accepted practice by FERC.

70 *See* OATT Filing, Attachment M, Protocols, Section I.5(b) (stating the FERC Form 1 will be the source of data for the formula rate in years beginning October 1, 2020, *i.e.*, the 2019 calendar year).

71 *See* Tri-State OASIS, West Transmission Rate.

72 *See id.*

The source data for inputs to formula rate templates are not all reported in a FERC Form 1 or in RUS Form 12. Instead, as evident from other FERC-approved formula rate templates, it is a common and accepted practice for Transmission Providers to use "company records" as support for inputs to formula rates.[73] Therefore, despite ARPA's protest, there is no requirement that Tri-State identify and define each company record.

As for the remaining source data for Tri-State's proposed formula rate template, Tri-State relied on inputs from audited financial records and property records. Tri-State's use of this data is consistent with the source data that Tri-State uses in its FERC-approved formula rate template for its facilities in SPP. Tri-State's adoption of that previously approved practice for source data in this case should be considered reasonable.

2. Tri-State's Proposed ROE and Capital Structure in its Formula Rate Are Just and Reasonable.

ARPA also challenges Tri-State's proposed base ROE and capital structure, which are based on the Commission-approved settlement of Tri-State's formula rate in SPP.[74] Tri-State's use of the ROE and capital structure included in its Commission-approved SPP settlement is equally reasonable for use in Tri-State's formula rate for transmission services on other parts of its system.[75]

The 9.30% base ROE proposed by Tri-State is also reasonable in comparison to other returns approved by FERC in the western interconnection.[76] And as to capital structure, Tri-State

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73 *See, e.g.*, Public Service Company of New Mexico, OASIS, https://www.oasis.oati.com/pnm/index.html; Public Service Company of New Mexico, OASIS, https://www.oasis.oati.com/psco/index.html; Arizona Public Service, OASIS, https://www.oasis.oati.com/AZPS/; PacifiCorp, OASIS, https://www.oasis.oati.com/PPW/.

74 *See* ARPA Protest at 15-17.

75 *See* OATT Filing, Ex. TS-001, 15:17-16:2.

76 *See, e.g.*, Public Service Company of New Mexico, OASIS (reflecting 10% ROE), https://www.oasis.oati.com/pnm/index.html; Public Service Company of New Mexico, OASIS (reflecting 9.72% ROE), https://www.oasis.oati.com/psco/index.html; Arizona Public Service, OASIS (reflecting

has proposed using the same hypothetical equity "floor" that was approved in the settlement for Tri-State's facilities in SPP. The use of the hypothetical equity ratio ensures that entities like Tri-State with low equity levels receive equitable compensation for their transmission facilities compared to investor-owned utilities. The use of an equity floor in developing Tri-State's capital structure is reasonable.

3. Tri-State's Proposed Labor Cost Allocator Appropriately Isolates Transmission Labor Expense.

ARPA's challenges to the labor wage factor Tri-State used in its formula rate to allocate the transmission labor expenses for administrative, general, and other common costs to develop its Annual Transmission Revenue Requirement ("ATRR")[77] reflect a misunderstanding of Tri-State's supporting data. Contrary to ARPA's allegation, Tri-State did not use the same labor expenses for transmission as it has for production in its formula rate. Rather, in developing its transmission labor allocator, Tri-State removed all labor associated with load dispatching. By doing so, Tri-State's transmission labor is approximately $47.7 million compared to $54.5 million for production related labor in 2018.[78] Thus, Tri-State's transmission labor allocator properly reflects only transmission labor costs and excludes production labor costs.

4. Tri-State Did Not Include Lobbying or Other Political Expense in its A&G Expense.

In response to ARPA's concern regarding lobbying or other political expense, Tri-State notes that the accounting guidance for both RUS Form 12 and the FERC Form 1 state that administrative and general expenses shall not include expenses associated with lobbying and

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10.75% ROE), https://www.oasis.oati.com/AZPS/; PacifiCorp, OASIS (reflecting 9.80% ROE), located at: https://www.oasis.oati.com/PPW/.

77 *See* ARPA Protest at 18.

78 *See* OATT Filing, Ex. TS-003 at 11 line 2, col. D (removing load dispatching labor from transmission labor costs is appropriate because it is a separate revenue requirement that is recovered under Schedule 1).

certain "Civic, Political and Related Activities" in the transmission rate, but should be accounted for in Account 426.4.[79] Tri-State confirms that it has complied with this accounting guidance and properly excluded these expenses from its transmission formula rate in this case.

5. Tri-State Did Not Include Costs for Direct Assignment Facilities in its Formula Rate.

ARPA's concern about possible inclusion of costs associated with direct assignment facilities in Tri-State's formula transmission rate[80] is misplaced, as Tri-State does not include direct assignment facilities in its transmission formula rate.

6. Tri-State Has Correctly Treated Behind-the-Meter Load.

ARPA's request for more data on behind-the-meter load is unnecessary. Consistent with Commission precedent, Tri-State's load reporting practices include load served by behind-the-meter generation in the billing determinant used for development of its formula rate.[81]

7. Tri-State's Proposed Depreciation Rates are Just and Reasonable.

ARPA contends that the proposed depreciation rates included in Tri-State's formula rate should be set for hearing and settlement procedures,[82] but it offers no basis to contest such

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79 18 C.F.R. pt. 101 § 426.4. *See* OATT Filing, Ex. TS-001 at 12 n.6 (noting the RUS Uniform System of Accounts utilizes a similar chart of accounts found in the FERC Uniform System of Accounts).

80 *See* ARPA Protest at 19.

81 *See, e.g., Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles ¶ 31,036, at 31,736, (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles ¶ 31,31,048 (1997*), order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (stating that for network service all load behind a discrete delivery point must be included in the billing determinants); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs., Regs. Preambles ¶ 31,241, at P 1619, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) (affirming that behind the meter generation is not netted against network load).

82 *See* ARPA Protest at 20.

depreciation rates, nor does it identify disputed issues of material fact that must be resolved to determine the appropriate depreciation rates for Tri-State.

In fact, as noted by ARPA, the depreciation rates Tri-State proposes for use in this case are from a 2017 depreciation study performed on all of Tri-State's transmission, distribution and general plant assets based on plant in service as of December 31, 2015. Tri-State's depreciation rate study was accepted by the Commission without comment or modification in an earlier SPP proceeding.[83] Therefore, ARPA has not made a persuasive case why the depreciation rates recently filed and approved by the Commission for Tri-State's facilities should be further examined in this proceeding.

8. Tri-State's Proposed Annual Rate Change Mechanism Based on Actual Costs for the Prior Year is Just and Reasonable.

ARPA's argument that Tri-State's formula rate proposal does not provide for an annual true-up of its calendar year costs and rates, and therefore, does not provide a mechanism to true-up the costs incurred during a Rate Year[84] is flawed. Contrary to ARPA's assumption, Tri-State's formula rate relies upon actual costs from the prior year to determine the recovery of costs during the Rate Year. Because actual -- rather than projected -- costs are used, a true-up mechanism is not needed or appropriate. The formula rate template includes a mechanism to reconcile any differences resulting from, for example, errors or changes in accounting practices, in the subsequent year, should an adjustment to costs used in the formula rate template be required.

In Tri-State's case, because the costs used to populate the formula rate are actual costs from the previous calendar year, there is no need for Tri-State to make any true-ups to its formula rates.

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83 *See Sw. Power Pool, Inc.*, Letter Order, Docket No. ER18-985-000 (Apr. 13, 2018).

84 *See* ARPA Protest at 20-21.

9. The Charges for Tri-State's Schedule 2 Reactive Supply and Voltage Control Service Are Just and Reasonable.

ARPA's challenges to the charges for Tri-State's proposed Schedule 2 service are unavailing and, as demonstrated below, the Commission should approve such charges without change.

First, the fact that the annual revenue requirement for Reactive Supply and Voltage Control Service under proposed Schedule 2 (*i.e.*, $2,543,530) is significantly higher than the annual revenue requirement for Tri-State's existing Schedule 2 service (*i.e.*, $472,113)[85] simply reflects Tri-State's adoption of a superior methodology for determining costs for the proposed service. Whereas, the charges for Tri-State's existing service were based on a proxy methodology that used the costs from a single generating plant to calculate the Schedule 2 rate system wide (*i.e.*, 1.05/kW/Yr.), its proposed Schedule 2 service charge employs actual costs from each generating plant that is used to provide Reactive Supply and Voltage Control, yielding the proposed fleet-wide reactive rate of $1.09/kW/Yr. Accordingly, the appropriate comparison should not be to the annual revenue requirement, but to the corresponding annual rate. On that basis, Tri-State's proposed rate represents only a 3.8% increase over the current Schedule 2 rate, which the Commission should find is fully supported and reasonable.

Nor is there any substance to ARPA's claim that Tri-State improperly removed from proposed Schedule 2 the self-supply language that is included in Tri-State's existing Schedule 2.[86] In the transmittal letter to the OATT Filing, Tri-State explained that its proposed OATT largely conforms to the *pro forma* OATT. Because Schedule 2 of the *pro forma* OATT does not include language for the self-supply of Reactive Power and Voltage Control service, Tri-State did not carry

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85 *See* ARPA Protest at 21.

86 *Id.*

over the language on self-supply from its existing Schedule 2 in the as-filed OATT, choosing instead to conform to the provisions of the *pro forma* OATT.

Similarly, ARPA incorrectly claims that Tri-State has not presented sufficient information on the investment in the Fixed Capability Component and the Annual Fixed Charge Rate applied to the total investment in the reactive power production plants connected to its western transmission system to establish the Schedule 2 rate. For the Fixed Capacity Component, Tri-State's witness, Mr. Rob Smith, testified that he calculated the reactive revenue requirement, in part, based on investment data from Tri-State's accounting records.[87] The accounting records relied on by Mr. Smith were audited. Mr. Smith also testified that when investment data for a facility was not readily available, he relied on the experience and industry knowledge of Tri-State's engineers to provide estimates of the percentage of investment for certain equipment groups of those facilities.[88] Despite ARPA's concerns, Mr. Smith's use of the Tri-State engineering estimates served as a reasonable "proxy" for purposes of compiling the reactive revenue requirement. In addition, Mr. Smith's study included only Tri-State generating units that are capable of producing reactive power and the direct costs associated with those facilities. No indirect costs were part of Mr. Smith's reactive power calculation. Therefore, ARPA's concerns about double counting are misplaced.[89]

Also, consistent with his use of the AEP methodology in evaluating costs from the generating plants providing reactive supply and voltage control for the western transmission system,[90] Mr. Smith used the 0.15% allocator for the Balance of Plant investment used in *AEP*

87 *See* OATT Filing, Ex. TS-008, 17:17-19.

88 *See* OATT Filing Ex. TS-008, 19:1-7.

89 *See* ARPA Protest at 24 (citing *Duke Energy Fayette, LLC*, 104 FERC ¶ 61,090 (2003)).

90 *See* OATT Filing, Ex. TS-008, 13-16 (citing *American Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) ("*AEP*")).

because the Commission has found this to be a reasonable proxy in other reactive service filings.[91] Finally, Mr. Smith testified that, because of the level of coal-fired generation on Tri-State's system, it was reasonable to use the same 10% Accessory Electric Equipment allocator used in *AEP*.[92]

For the Annual Fixed Charge Rate, Mr. Smith testified that he used a weighted cost of capital of 6.10% and a 9.3% rate of return on equity, the same components underlying Tri-State's proposed western area transmission formula rate, which are derived from the Commission-approved settlement establishing Tri-State's settlement rates for facilities in SPP. Finally, despite ARPA's concerns, Tri-State's use of a levelized annual carrying charge cost approach and the identified components used to determine the levelized fixed charge rate are reasonable and have been utilized by other generators to develop their reactive revenue requirement.[93]

10. Tri-State Will Adjust Its Load-Shedding and Curtailment Penalty for Network Customers to 100% of the Network Integration Transmission Service Charge.

In reviewing ARPA's comments on proposed Section 33.7 of its OATT, Tri-State discovered that it had mistakenly set the penalty for a Network Customer's failure to respond to load shedding or curtailment directives from Tri-State under Section 33.7 at 200% of the Network Integration Charge. Tri-State modeled this provision on the similar provision employed by another Transmission Provider and approved by the Commission,[94] where the stated penalty was 100% of the Network Integration Charge. Tri-State will reduce the penalty amount in Section 33.7 to 100% of the Network Integration Charge in a separate compliance filing as directed by the Commission.

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91 *See* OATT Filing, Ex. TS-008, 22:8-11.

92 *See id.*, 21:6-10.

93 *See, e.g., AEP* at 61,455 and 61,458 (approving the levelized gross plant method and inclusion of O&M expenses).

94 *See* OATT Filing, Transmittal Letter at 10-11 n.26 (citing *South Central MCN, LLC*, 164 FERC ¶ 61,114 (2018)).

11. Tri-State's Real Power Loss Factor Is Fully Supported.

ARPA, PNM, and Kit Carson have raised questions about Tri-State's proposed Real Power Loss Factor percentage and the methodology used by Tri-State to calculate its loss percentage.[95] ARPA and Kit Carson also question why Tri-State's proposed loss factor is lower than its current loss factor.[96] As detailed below, Tri-State's proposed Real Power Loss Factor is based on a reasonable methodology, and therefore, the Commission should accept it as just and reasonable without modification.

As described in the testimony of Mr. Hubbard in Exhibit No. TS-006, Tri-State's calculated Real Power Loss Factor percentage is based on a Transmission System Loss Factor Study performed by Tri-State. The system loss study used power flow simulations to calculate the losses associated with current losses, transformer excitation, substation station service, and corona losses. For current and excitation losses, the study calculated losses based on varying load and generation levels and for different periods of the year (*i.e.*, summer, winter, and spring). Since substation power losses are typically unmetered, the study used estimated values based on average consumption. Finally, the study used the Bonneville Power Administration's "Corona and Field Effects Version 3.1" program to calculate the corona losses. The totals for each of these losses were then added together and divided by Tri-State's network load for a percent system loss. The percent system loss was then weighted based on hours of operation to determine the total weighted real power loss percentage, *i.e.*, 3.378%.

As shown above, Tri-State's methodology calculates a Real Power Loss factor that is based on power flow models that account for the physical nature of Tri-State's transmission system and

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95 *See* ARPA Protest at 28; Motion to Intervene and Comments of Public Service Company of New Mexico, Docket No. ER19-2441, at 3 (Aug. 16, 2019) ("PNM August 16 Comments"); Kit Carson Protest at 7.

96 *See* ARPA Protest at 28; Kit Carson Protest at 7.

measures all necessary types of system losses over several operating conditions. This is similar to the approach used to determine the transmission loss factors for another public utility in the western interconnection.[97]

In contrast, PNM contends that Tri-State should use a measured loss rate methodology for its loss calculations.[98] However, the measurements for this type of real power loss must be done by a balancing authority. Unlike PNM, Tri-State is not a balancing authority, but resides in multiple different BAAs, making the measured loss rate methodology impractical for Tri-State. Therefore, the Commission should reject the request by PNM for Tri-State to calculate line losses based on PNM's preferred methodology, and find Tri-State's proposed Real Power Loss Factor is reasonable and approve it as part of it's as-filed OATT.[99]

The Commission should also disregard the other questions raised about Tri-State's Real Power Loss calculation. ARPA argues that the *pro forma* OATT does not require a transmission provider to provide Real Power Loss service.[100] However, the *pro forma* OATT does include a placeholder for the applicable Real Power Loss factor to be completed by the Transmission Provider. Therefore, Tri-State's provision of Real Power Loss Service and its inclusion of its Real

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97 *See* Public Service Company of Colorado, Update to Transmission Loss Factors, Docket No. ER15-266-000 (Oct. 13, 2014) (using an electric system loss analysis based on power flow studies for different system conditions to calculate the losses for transmission lines, transforms, and corona losses). *See Pub. Serv. Co. of Colorado*, 151 FERC ¶ 61,018 (2015), *order approving settlement*, 154 FERC ¶ 61,205 (2016).

98 *See* PNM August 16 Comments at 3.

99 *See California Indep. Sys. Operator Corp*., 124 FERC ¶ 61,271, at P 107 (2007) ("When the utility's proposed filing is determined to be just and reasonable, the Commission need not consider whether alternative proposals may be also be just and reasonable."); *California Indep. Sys. Operator Corp*., 121 FERC ¶ 61,193, at P 106 (2007) (citing *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61, 282, at P 29 (2006), *reh'g denied, E. ON U.S. LLC*, 116 FERC ¶ 61,020 (2006)) (the just and reasonable standard under the FPA is not so rigid as to limit rates to a "best rate" or "most efficient rate" standard; rather, a range of alternative approaches often may be just and reasonable); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241, at P 62 (2006) ("Under the FPA, if we find that the Midwest ISO has successfully supported the justness and reasonableness of its proposal, we must approve it even if there are other just and reasonable ways to allocate transmission costs.").

100 *See* ARPA Protest at 28.

Power Loss factor in its OATT are entirely consistent with Order No. 888 and the services offered by other Transmission Providers in the western interconnection.[101]

PNM also questions the facilities included in Tri-State's Real Power Loss calculations.[102] Tri-State clarifies that its system loss study properly excluded distribution and generation step-up transformers that were not included in Tri-State's ATRR. Tri-State also excluded the losses due to point-to-point transmission service provided to others. Further, Tri-State clarifies that transmission facilities that were part of the system loss study (*i.e.*, Ex. TS-007) included transmission facilities in which Tri-State owns or has partial ownership in that contribute to Real Power Losses on the system. Logically, this represents a portion of the transmission facilities that Tri-State included as part of its ATRR calculation, *i.e.*, Ex. TS-005.[103]

Finally, the concerns raised about Tri-State's proposed Real Power Loss factor being lower than its current Loss factor are misplaced.[104] Tri-State's current Real Power Loss factor is not at issue in this proceeding. This proceeding relates only to the proposed Real Power Loss factor included in Tri-State's as-filed OATT. Moreover, Tri-State's transmission system has changed since Tri-State calculated its current Real Power Loss factor. The system loss study that Tri-State performed to calculate its proposed Real Power Loss factor included transmission lines,

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101 *See* Order No. 888 at 31,709 (stating "we will require that the transmission provider indicate, either in its tariff or on its OASIS, what the energy and capacity loss factors would be for any transmission service it may provide so that potential customers will know the amount of losses to replace."); PNM OATT, Section 15.7; PSCo OATT, Section 15.7; Deseret OATT, Section 15.7; APS OATT, Section 15.7.

102 *See* PNM August 16 Comments at 3.

103 PNM also contends that Tri-State's list of transmission facilities used for the calculation of its ATRR, *i.e.*, Ex. TS-005, improperly included certain substations owned by PNM. *See* PNM August 16 Comments at 3. While PNM does own these facilities, Tri-State also owns transmission facilities at these substations. It is these transmission facilities that are properly reflected in Exhibit TS-005 and properly included in Tri-State's ATRR calculation. PNM also questions how Tri-State treated lower voltage facilities in its ATRR. *See* PNM August 16 Comments at 3. Tri-State does not have lower voltage underbuilt facilities on transmission structures or lower voltage underbuilt facilities in substations.

104 *See* ARPA Protest at 28; Kit Carson Protest at 7.

transformers, and other upgrades that were not part of Tri-State's prior system study and loss calculation. Accordingly, even if relevant, no apples-to-apples comparison is possible.

12. Tri-State's Proposed Formula Rate Protocols Are Just and Reasonable and Not Unduly Discriminatory.

ARPA asserts that Tri-State's proposed formula rate protocols are inconsistent with Commission precedent or are otherwise unclear.[105] ARPA apparently opposes Tri-State's efforts to adopt protocols that are consistent across its system. Tri-State's proposed Formula Rate implementing protocols are virtually identical to the Formula Rate protocols which govern Tri-State's formula rate in SPP and which has been approved by the Commission.[106]

The informational guidance document prepared by Commission staff on which ARPA relies, by its terms, serves only as "informal staff guidance on preparing annual formula rate updates." It is not Commission precedent or sufficient authority to support a finding that Tri-State's chosen approach on its formula rate protocols is unjust and unreasonable.

ARPA incorrectly claims that Tri-State's protocols lack transparency because annual updates will be posted only on Tri-State's OASIS and not on its website. First, there is a link to Tri-State's OASIS on its website, thus allowing immediate access to the updates. Second, the cases ARPA cites where the Commission required postings on websites involved Commission directions to RTOs to post the formula rates and informational filings of transmission owners on the RTO's website. Those cases do not require transmission owners -- particularly transmission owners that are not members of RTOs -- to do more than post the information on their OASIS. Tri-State is not a member of an RTO in the western interconnection and does not have an RTO website.

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105 *See* ARPA Protest at 29.

106 *Compare* Tri-State OATT, Attachment M, *with* SPP OATT, Attachment H, Addendum 36. *See Sw. Power Pool, Inc.*, 159 FERC ¶ 62,098 (2017) (approving Tri-State's Formula Rate Implementation Protocols as part of partial settlement).

ARPA also complains that Tri-State's proposed Informational Filings with the Commission will not provide adequate information to determine the reasonableness of all costs proposed to be recovered in the annual updates.[107] ARPA confuses the requirements for the Informational Filing with the requirements that are to be provided to customers through the Annual Update process. The Informational Filing is intended to provide the Commission with Tri-State's updated transmission rate template reflecting its ATRR. The Informational Filing is not intended to provide the same level of detail that is provided to customers through the Annual Update process.

Despite its purported concern about transparency and the Commission's requirement that formula rate protocols contain "a straightforward and established process that is specifically tailored" to the annual formula rate updates,[108] ARPA complains that the procedures for formal challenges are too burdensome. First, these same requirements were approved and have been in place for the portion of Tri-State's system that is under SPP functional control, and have not been challenged as unduly burdensome. More importantly, the protocols are designed to ensure a "straightforward and established process" that will allow a party to raise a challenge to an annual update and for Tri-State to understand what the party is challenging and why. The Formal Challenge procedures in no way are designed to shift Tri-State's burden of demonstrating that the implementation of its formula rate is just and reasonable, or to impede a party's right to raise a formula challenge pursuant to FPA section 206.

ARPA's disagreement with Tri-State's proposed formula rate protocols does not render the protocols unjust and unreasonable. Tri-State's proposed formula rate protocols for the western

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107 *See* ARPA Protest at 33-34.

108 *See* ARPA Protest at 32 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013)).

portion of its system incorporate the same FERC-accepted protocols that apply to Tri-State's facilities in SPP. Those protocols have been implemented and have worked well without generating complaints. It is reasonable for Tri-State to adopt the same formula protocols for its facilities in the west, so that there is consistency and continuity across its system. Further, Tri-State's protocols need not represent the "best" methodology but only a methodology that is just and reasonable.[109] The Commission should accept and approve Tri-State's formula rate protocols for the western part of its system as just and reasonable.

13. Tri-State's Proposed Formula Transmission Rate is Just and Reasonable.

Kit Carson, a former Tri-State Member and now a transmission service customer under the OATT, generally protests Tri-State's transmission and wholesale power rates and asks the Commission to ensure that they are cost-based, just and reasonable, and not unduly discriminatory. Kit Carson complains that, historically, it has faced rate increases by Tri-State for both wholesale power and transmission service that, in its view, were not cost based.[110] In addition, Kit Carson contends that Tri-State's rate filings violate the non-discriminatory standard under FPA section 205 because Tri-State intends to charge different rates to itself by proposing a formula rate for transmission service and a Stated Rate for wholesale power with Tri-State's Members.[111] As detailed below, Kit Carson's arguments lack merit.

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109 *See Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201 (10th Cir. 1987) ("[W] need not enter this morass for it is not our prerogative to require the Commission to use what we perceive to be the 'best' methodology. We are to ensure only that the methodology employed was reasonable and produced reasonable rates.") (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917, 105 S. Ct. 293, 83 L. Ed. 2d 229 (1984) (in which it was determined that "FERC has interpreted its authority to review rates under the FPA as limited to an inquiry into whether the rates proposed by a utility are reasonable -- and not to extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs")); *see also Cal. Indep. Sys. Operator Corp.*, 160 FERC ¶ 61,047 (2017).

110 *See* Kit Carson Protest at 6.

111 *See id.* at 7.

Having withdrawn from Tri-State in 2016, Kit Carson now claims that Tri-State's ATRR for its transmission service formula rate is *lower* than the ATRR for Kit Carson's current transmission service rate.[112] However, the rates for transmission service prior to September 3, 2019, are not at issue in this proceeding, nor are prior rate increases for transmission service from Tri-State. What is at issue are Tri-State's formula transmission rate under its OATT and its Stated Rate for wholesale power service under its WESC's. Kit Carson has offered no evidence to demonstrate that Tri-State's proposed formula transmission rate or its Stated Rate are not cost-based. Tri-State has supported those rates with filed testimony and exhibits demonstrating that they are just and reasonable.

Kit Carson's second point can also be readily dismissed. Tri-State's proposed formula rate is for transmission service taken under Tri-State's as-filed OATT. In contrast, Tri-State's proposed Stated Rate will only be charged to Tri-State's Members for wholesale service under the WESCs. A different rate for two different customer classes does not, in itself, constitute undue discrimination or preference if the customer classes are not similarly situated.[113] The transmission customers subject to Tri-State's formula transmission service rate are not similarly situated to Tri-State's Members subject to the Stated Rate for wholesale power service. The two services have

112 *See id.* at 6.

113 *See, e.g.*, *City of Vernon v. FERC*, 845 F.2d 1042, 1045 (D.C. Cir. 1988) (finding undue discrimination when customers that are similarly situated receive disparate treatment for the same service); *Ark. Elec. Energy Consumers v. FERC*, 290 F.3d 362, 367 (D.C. Cir. 2002) ("a rate is not 'unduly' preferential or 'unreasonably' discriminatory" in violation of the FPA if jurisdictional utility can justify the disparate effect); *Consol. Edison Co. v. FERC*, 165 F.3d 992, 1012-13 (D.C. Cir. 1999) (finding that due to distinctions the customers were not similarly situated and it was not unduly discriminatory to treat them differently for purposes of the rate).

different cost structures. Therefore, contrary to Kit Carson's claim, Tri-State's rate filings are not unduly discriminatory and do not violate FPA section 205.[114]

14. Tri-State's Proposed Deviations from the Explicit Terms of the *Pro Forma* OATT Are Fully Justified and Explained.

CoPUC challenges Tri-State's proposed deviations from the express terms of the *pro forma* OATT, claiming that the fact that Tri-State has proposed "several dozen" changes necessitates further proceedings to determine whether Tri-State has met the applicable standard to gain Commission acceptance.[115]

Tri-State does not agree that the number of deviations from the *pro forma* OATT should be determinative of whether the Commission can accept Tri-State's proposed OATT without further proceedings. As CoPUC correctly notes, the majority of Tri-State's proposed deviations are ministerial in nature. Importantly, Tri-State has explained each of these ministerial deviations and given the Commission an adequate basis to determine that these changes are just and reasonable and meet the "consistent with or superior to" standard.[116] As for Tri-State's more substantive deviations from the *pro forma* OATT, Tri-State has provided the necessary detail and explanation to show how each of these proposed revisions also is consistent with or superior to the *pro forma* OATT.[117] Against Tri-State's explanations, with the exception of its assertions regarding Attachment K addressed below, CoPUC has not identified any proposed deviation that warrants scrutiny.

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114 *See Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549-50 (D.C. Cir. 2010) (upholding the Commission's determination that the rate was not unduly discriminatory because the entity claiming discrimination was not similarly situated to others).

115 *See* CoPUC August 13 Protest at 15-16.

116 *See* OATT Filing, Attachment C (Summary of Deviations from *Pro Forma* OATT).

117 *See* OATT Filing, Transmittal Letter at 7-18.

15. Tri-State's Proposed Attachment K Complies with Order Nos. 890 and 1000.

CoPUC questions whether Tri-State's Attachment K to the as-filed OATT complies with the requirements of Order No. 890's planning principles and Order No. 1000 in terms of affording all stakeholders a meaningful opportunity to provide input on Public Policy Requirements as part of the Local Planning Process.[118]

CoPUC's concerns about Attachment K are misplaced. First, CoPUC has acknowledged that Tri-State's proposed Regional Transmission Planning Process in Attachment K complies with the nine planning principles of Order No. 890.[119] Attachment K also applies these same principles equally to Tri-State's Local Planning Process. Therefore, the Commission should find that both Tri-State's Local and Regional Planning Processes in Attachment K comply with the planning principles of Order No. 890.

Second, Tri-State complies with Order No. 1000 by incorporating a Public Policy Requirement as part of its Local Planning Process. Importantly, Tri-State's process explicitly provides for stakeholder participation and input. Specifically, stakeholders are able to participate in various outreach efforts, including CoPUC Rule 3627 specific meetings and communications, and meetings of the Colorado Coordinated Planning Group.[120] In addition, Tri-State conducts at least one open public planning meeting each year to develop its transmission plan.[121] Further, stakeholders are able to participate in project-specific meetings that evaluate identified project solutions and submit their own proposed alternative local transmission solutions.[122] At each point

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118 *See id*. at 17-18.

119 CoPUC August 13 Protest at 17.

120 *See* Tri-State OATT, Attachment K, Section II.A.6.a.

121 *Id*.

122 *Id* at Sections II.A.6.a and II.D.2.

of contact, stakeholders have a "meaningful opportunity" to provide their input on transmission needs driven by Public Policy Requirements, inclusive of Colorado's renewable program and Senate Bill 19-236, as identified by CoPUC.

Finally, Tri-State's Local Planning Process, including the Public Policy Requirements, is consistent with the planning process used by another public utility in the western interconnection that has been approved by FERC.[123] Therefore, the Commission should similarly find that Tri-State's Transmission Planning Process in Attachment K complies with Order Nos. 890 and 1000, and accept it, as filed.

16. Tri-State's Proposed Pro Forma Large Generator Interconnection Procedures and Interim Procedures are Just and Reasonable.

GNE protests Tri-State's OATT Filing in two limited respects. First, GNE objects to the requirement in Tri-State's prior Generation Interconnection Procedures ("GIP") that an Interconnection Customer must, among other things, provide security in the form of a deposit or Letter of Credit equal to twenty-five percent (25%) of the Interconnection Facilities and Network Upgrades to be funded by the Interconnection Customer in order to enter into a Facility Study.[124] GNE asks the Commission to require Tri-State to modify its GIP to conform to the pro forma

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123 *See Xcel Energy Servs., Inc.*, Letter Order, Docket No. ER16-2502 (Oct. 27, 2016) (approving the Public Service Company of Colorado's Attachment R, Transmission Planning Process).

124 *See* GNE August 13 Protest at 5, 18. GNE refers to Tri-State's prior GIP, Attachment K, Section 8.1 which states, in relevant part:

> 8.1 Interconnection Facilities Study Agreement.
>
> Within ten (10) Business Days after receipt of the final Interconnection System Impact Study report, Interconnection Customer shall (a) narrow the scope to one level of Generating Facility Capacity and Interconnection Service, if not previously narrowed under Section 7.3.1, for completion of the Interconnection Facilities Study; (b) provide demonstration of Site Control of at least fifty percent (50%) of sufficient land area to support the size and type of Generating Facility proposed; (c) provide security in the form of a deposit or Letter of Credit to cover twenty-five percent (25%) of the cost of the proposed Interconnection Facilities and Network Upgrades to be funded by Interconnection Customer identified in the final Interconnection System Impact Study; and (d) elect to proceed with Network Resource Interconnection Service or non-Network Interconnection Service, as provided under Section 3.2.1.

Large Generator Interconnection Procedures ("LGIP") and process GNE's Interconnection Request without any additional security.[125]

Second, GNE requests that the Commission reject Tri-State's proposed interim procedures for transitioning to the new LGIP and instead require Tri-State to process GNE's pending Interconnection Request based on the queue position GNE held before it exercised its right under the GIP to enter deferral before the Facilities Study stage.[126] As detailed below, GNE's objections are misplaced and the Commission should accept Tri-State's as-filed OATT, including the new LGIP and interim procedures, as just and reasonable.

GNE's concern about having to post additional security under Tri-State's GIP in order for its Interconnection Request to move forward with a Facilities Study is a moot point.[127] Tri-State's as-filed OATT includes Attachment N that replaces Tri-State's current GIP and largely conforms to the Commission's pro forma LGIP. In particular, Tri-State's new LGIP includes Section 8.1 of the pro forma LGIP, which requires only a study deposit and no posting of security for purposes of GNE's pending Interconnection Request.[128] Therefore, under Tri-State's proposed Attachment N, GNE will not be required to post additional security if it chooses to bring its pending Interconnection Request out of deferral.

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125 *See* GNE August 13 Protest at 20.

126 *See id.*

127 As noted previously, GNE has filed a separate FERC complaint requesting that Tri-State revise its GIP to conform to the *pro forma* LGIP. *See supra* n.26. Tri-State will respond to GNE's complaint in accordance with FERC's requirements.

128 *See* LGIP, Section 8.1 (requiring the Interconnection Customer to return the executed Interconnection Facility Study Agreement "together with the required technical data and the greater of $100,000 or Interconnection Customer's portion of the estimated monthly cost of conducting the Interconnection Facility Study.").

GNE still must meet the other requirements under the new LGIP to proceed to an Interconnection Facilities Study.[129] GNE's ability to demonstrate compliance with those requirements is outside the scope of this proceeding.

As to GNE's second concern, Tri-State's proposed interim procedures are essential to facilitate the transition to Tri-State's new LGIP and to avoid significant disruption and costs from those Interconnection Requests that choose to come out of deferral offered under the prior GIP.[130] Importantly, GNE has only objected to the one feature of the proposed interim procedures that requires an Interconnection Request that decides to come out of deferral to be assigned a new Queue Position for the Facilities Study based on when Tri-State receives the executed Interconnection Facilities Study Agreement. In GNE's view, being assigned a new Queue Position could result in lower-queued Interconnection Requests being processed before GNE's higher-queued Interconnection Request.[131] While Tri-State does not dispute that this risk exists, the interim procedures are a reasonable approach meant to balance the interests of those Interconnection Requests that took advantage of the deferral period offered under Tri-State's prior GIP and those Interconnection Requests that did not go into deferral, but moved forward in the study process, were able to meet the requirements for a Facilities Study, and were re-queued in accordance with Section 4.1 of Tri-State's prior GIP.[132] A first-ready, first-served approach is

129 *See*, *e.g.*, LGIP, Section 7.2 (requiring an Interconnection Customer to demonstrate Site Control to execute the Interconnection System Impact Study Agreement, and therefore, an Interconnection Customer must have Site Control before a Facilities Study); LGIP, Section 7.6 (requiring a re-study of a System Impact Study if a higher queued project drops out of the queue, is modified subject to Section 4.4, or re-designates the Point of Interconnection pursuant to Section 7.2).

130 *See* OATT Filing, Transmittal Letter at 15.

131 *See* GNE August 13 Protest at 18.

132 *See* GIP, Section 4.1 states "[t]he Queue Position shall govern the order of priority only through completion of an Interconnection System Impact Study. Thereafter, Interconnection Customers with Interconnection Requests that meet the requirements set forth in Section 8.1.1 shall proceed to an Interconnection Facilities Study on a first ready, first served basis. Further processing of each Interconnection Request shall be queued

consistent with and has been supported by the Commission as a way to promote the timely processing of Interconnection Requests that are ready to move forward with construction and commercial operation and should be approved here as part of Tri-State's interim procedures.[133]

It is also important to note that assigning a new Queue Position for an Interconnection Customer that comes out of deferral is specified in Tri-State's prior GIP and has been applied in a non-discriminatory manner to all of Tri-State's Interconnection Customers. In other words, by being assigned a new Queue Position, the Interconnection Customers in deferral will be subject to the same terms in the interim procedure that they understood to be applicable when they originally entered Tri-State's Interconnection Study queue. Consequently, it would be unfair to allow GNE to avoid this requirement when GNE was aware, or should have been aware, of this requirement when it submitted its Interconnection Request and when it subsequently entered into deferral. It would also be unfair to those Interconnection Customers that moved forward in the queue and did not go into deferral. Therefore, the Commission should approve Tri-State's proposed interim procedures as a reasonable and fair way to transition to Tri-State's new LGIP and superior to the *pro forma* LGIP.

consecutively based on the order in which all pending Interconnection Requests have met the requirement of Section 8.1.1 [proceeding with a Facilities Study]."

133 *See Pub. Serv. Co. of New Mexico*, 136 FERC ¶ 61,231, at P 79 (2011), *reh'g denied*, 139 FERC ¶ 61,155 (2012) (approving a first-ready, first-served approach for the Definitive Queue to ensure projects that meet rigorous milestones (*i.e.*, security for network upgrades, site control) and are commercially viable); *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 18 (2008) (providing guidance that "there may be merit in a first-ready, first-served approach, whereby customers who demonstrate the greatest ability to move forward with project development are processed first); *Sw. Power Pool, Inc.*, 128 FERC ¶ 61,114, *order on compliance*, 129 FERC ¶ 61,226 (2009), *order on compliance*, 133 FERC ¶ 61,139 (2010) (approving first-ready, first-served model and project readiness milestones to enter late stages of study process).

E. ANSWER TO PROTESTS IN DOCKET NO. ER19-2470: ORDER NO. 845 COMPLIANCE FILING

Only CoPUC protests Tri-State's Order Nos. 845 and 845-A compliance filing.[134] It contends that Tri-State proposed "several" deviations from the *pro forma* LGIP and Large Generator Interconnection Agreement ("LGIA") adopted in Order Nos. 845 and 845-A related to Contingent Facilities, Provisional Interconnection Service, Surplus Interconnection Service, and Permissible Technological Advancements.[135] However, CoPUC raises only a limited issue with respect to Tri-State's proposed definition of Contingent Facilities. Specifically, CoPUC asks Tri-State to clarify how the inclusion of "planned upgrades not yet in-service" satisfies the consistent with or superior to standard for deviations from the pro forma LGIP and questions Tri-State's proposed inclusion of Contingent Facilities as part of Provisional Interconnection Service.[136]

To begin, as noted in its filing, Tri-State largely adopted the pro forma language in Order Nos. 845 and 845-A.[137] The changes Tri-State has proposed were primarily limited to responding to areas where the Commission specifically left it to the Transmission Provider to develop the language for compliance.[138] In this regard, Tri-State's filing included specific language related to the identification of Contingent Facilities, Provisional Interconnection Service, utilization of Surplus Interconnection Service, and the incorporation of Permissible Technological Advancements. In doing so, Tri-State explained the reasoning for the specific proposed language and how the proposed language for each provision satisfied the consistent with or superior to

134 GNE filed a protest in Docket No. ER19-2470, but stated that it was just renewing its protest related to Tri-State's prior GIP and new LGIP in Tri-State's OATT filing. *See* GNE August 23 Protest at 12. Tri-State responds to GNE's OATT concerns above.

135 *See* CoPUC August 13 Protest at 24.

136 *Id*. at 25.

137 *See* OATT Filing, Transmittal Letter at 4.

138 *See id.* at 5.

standard for changes to the pro forma LGIP and LGIA. Importantly, CoPUC has not challenged Tri-State's filing with respect to these compliance obligations for Order Nos. 845 and 845-A.

The one exception, as noted above, is Tri-State's proposal to modify the definition of Contingent Facilities in the pro forma LGIP. Tri-State's, as filed, LGIP adopted the Order No. 845 definition for Contingent Facilities, with the proposed modifications in italics:

> **Contingent Facilities** shall mean those unbuilt Interconnection Facilities and Network Upgrades, *and/or planned upgrades not yet in service* upon which the Interconnection Request's costs, timing, and study findings are dependent, and if delayed or not built, could cause a need for Re-Studies of the Interconnection Request or a reassessment of the Interconnection Facilities and/or Network Upgrades and/or costs and timing. *Contingent Facilities are identified in Appendix A of the Standard Large Generator Interconnection Agreement.*

In Order No. 845, the Commission found Contingent Facilities that affect interconnection studies of Interconnection Requests should be identified and included at the close of the System Impact Study phase.[139] The Commission recognized that the System Impact Study considered "generating facilities and identified network upgrades associated with higher-queued interconnection requests," and therefore, defined Contingent Facilities as "unbuilt Interconnection Facilities and Network upgrades" identified by those studies.[140] In doing so, the Commission found that providing this information would improve the interconnection process by allowing Interconnection Customers to better assess potential risk exposure and make a more informed decision on whether to proceed with an interconnection request.[141]

The terms "Interconnection Facilities" and "Network Upgrades" are only applicable to facilities needed to accommodate the interconnection of a Generating Facility to the Transmission

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139 *See Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043, at P 192 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

140 *Id.* at P 204.

141 *See id.*

Provider's transmission system. However, as part of the transmission planning process, Transmission Providers are also required to add facilities for other reasons, including to support Network Customers, for point-to-point transmission service, or to meet NERC compliance standards for system performance. These facilities are also considered as part of a System Impact Study. Therefore, by adding "planned upgrades not yet in service" to the definition of Contingent Facilities, Tri-State seeks to ensure that the Transmission Provider will consider all future facilities that could impact an Interconnection Request. This is superior to the definition in the *pro forma* LGIP because it provides a more accurate and comprehensive accounting of those future facilities on which the Interconnection Request's costs, timing, and study findings depend. By doing so, it enhances the transparency for the Interconnection Customer to evaluate whether to move forward with its Interconnection Request. Therefore, it is also entirely consistent with the stated objective in Order No. 845.

In Order No. 845, the Commission established the Provisional Interconnection Service to provide Interconnection Customers the ability to receive limited Interconnection Service while waiting for the full interconnection process to be completed and for necessary facilities to be put in place.[142] As noted above, by definition, the studies for Interconnection Requests and the construction of facilities necessary for the requested Interconnection Service are dependent on Contingent Facilities. So, it logically follows that an Interconnection Customer's Interconnection Request can now be subject to delays in receiving Interconnection Service caused by Contingent Facilities that could give rise to the option for the Interconnection Customer to request Provisional Interconnection Service. Therefore, Tri-State's proposal to add Contingent Facilities as part of the

[142] *See* Order No. 845 at PP 440-441.

consideration for Provisional Interconnection Service is consistent with and superior to the directives in the *pro forma* LGIP and should be accepted by the Commission.

CONCLUSION

Wherefore, Tri-State respectfully requests that the Commission grant Tri-State's Motion for Leave to Answer, and consider Tri-State's Answer in acting upon the various filings submitted in the above-captioned, unconsolidated proceedings.

Respectfully submitted,

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Dated September 20, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, DC this 20th day of September, 2019.

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